

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7825 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF POLICE FOR THE CITY OF AHMEDABAD

Appearance:

MR ANIL S DAVE for Petitioner
MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

The petitioner challenges the order of preventive
detention dated 30th August, 1998, made by the
Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and some four cases have been registered against him for violation of prohibition law during the months of May 1998 to August 1998 and all are pending investigation. In each of the said cases, substantial quantity of country liquor was recovered from the possession of the petitioner. The petitioner's activities are also held to be 'prejudicial to the maintenance of public order' within the meaning of section 3 (4) of the Act.

The only ground on which the impugned order has been assailed is in each of the above referred offences registered against the petitioner, the police had taken the samples of the liquor recovered from the petitioner and sent to the Forensic Science Laboratory for chemical examination. However the reports of the Forensic Science Laboratory in respect of the said samples have not been furnished to the petitioner. Thereby the petitioner's right to make an effective representation has been infringed. Though the petition has been contested by both the Detaining Authority as well as by the Central Government by filing their respective affidavits, the above contention is not at all dealt with. It is urged that the Detaining Authority while making the order of detention had not relied upon the reports of the Forensic Science Laboratory and, therefore, the same are not supplied to the petitioner. In the matter of RANVIRSINH KALYANSINH (SCA NO. 7490/98, decided on 12th JULY 1999) I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports were yet not available. In absence of the specific denial, it should be inferred that though the reports of the Forensic Science Laboratory were available to the Detaining Authority were not relied upon by it. In that case, even if the Detaining Authority did not rely upon such reports, it ought to have furnished reports to the petitioner. Besides, even after the petitioner's demand vide his representation dated 15th September, 1998, such reports

are not furnished to the petitioner, neither the said representation has been answered. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

Petition is, therefore, allowed. The impugned order dated 30th August 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI*